

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4373 of 2016
Date of decision: 19.12.2018

Santosh and others

.. Appellants

v.

Mukesh Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep K. Sharma, Advocate for the appellants.
Mr. Sanjeev Kodan, Advocate for respondent No. 3.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 21.9.2015, passed by the Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal') has been assailed by the legal heirs of Vikas (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The appellants are the parents and sister of the deceased. The driver of car bearing registration No. HR30K-0005 (hereinafter referred to as 'the offending vehicle'), owner and the insurer (i.e. Reliance General Insurance Company Limited) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively. The driver of car bearing registration No. CH-09(T)-6146 (hereinafter referred to as 'the car'), owner and the insurer (i.e. The New India Assurance Company Limited) of the car have been arrayed as respondents No. 4 to 6 respectively.

Brief facts necessary for adjudication of the present appeal are that on 26.11.2012, the deceased was going from Panipat to Kalveri Helipad in District Karnal in the offending vehicle and the same was being driven by one Mukesh. On reaching near Nirmal Kutia, Karnal, the offending vehicle overtook the Escort Gypsy and struck against the car. As a result of the impact, Vikas sustained grievous injuries and lost his life. FIR No. 1229 dated 26.11.2012 was registered at Police Station, Civil Lines, Rohtak.

A claim petition was filed under Section 166 of the Act. The Tribunal, after considering the facts and appreciating the evidence adduced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal initially awarded a sum of ₹ 21,10,872/- along with interest @ 7.5% per annum. As there was an arithmetical mistake, subsequently the award was rectified and the amount awarded was reduced to ₹16,01,220/- along with interest @ 7.5 per annum.

In the claim petition, it was pleaded that the deceased was posted as a Gunman and his age was 27 years. His date of birth was mentioned as 13.12.1985. After deducting certain allowances, the monthly income was taken by the Tribunal as ₹15,446/-. 50% future prospects were award and ½ deduction was made for self- expenses. The total dependency was calculated as ₹ 11,585/-. A multiplier of 11 was applied considering the age of the mother of the deceased.

Heard learned counsel for the parties, perused the paper book and the relevant documents produced by the parties.

The loss of dependency calculated by the Tribunal has not been

disputed. The only issue raised by learned counsel for the appellants is that the Tribunal erred in applying multiplier of 11 considering the age of mother of the deceased.

Learned counsel for the insurer defends the award and resists any further enhancement. He contends that the amount awarded under the conventional heads are on the higher side.

The contention raised by learned counsel for the appellants deserves acceptance. Multiplier is to be applied as per the age of the deceased. As per the claim petition, the deceased was 27 years of age. As per the post-mortem report, his age was assessed as 25 years. A Matriculation certificate has been produced and according to the said certificate also, the date of birth of the deceased is 13.12.1985, as was mentioned in the claim petition. There is no serious dispute with regard to the age of the deceased that he was 27 years at the time of accident. In consonance with the decision of the Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another**, (2009) 6 SCC 21, multiplier of 17 is to be applied

The issue that multiplier is to be applied considering the age of the deceased is no longer *res integra*. The Supreme Court in the case of **Sube Singh and another v. Shyam Singh (Dead) and others**, (2018) 3 SCC 18 has held as under:

“On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.9.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The

High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna Lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants.”

As the quantum of compensation is re-visited, it would be appropriate to grant the conventional heads in consonance with the decision of the Supreme Court in **National Insurance Company Ltd. v. Pranay Sethi and others**, AIR 2017 SC 5157. The claimants are also entitled to ₹ 15,000/- each for funeral expenses and for loss of estate.

In view of the above discussion, the compensation is re-calculated as under:

<i>Head</i>	<i>Compensation awarded</i>
Dependency as calculated by the Tribunal	₹11,585/- per month
Multiplier of 17 (11,585 x12 x17)	₹23,63,340/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Total compensation awarded	₹23,93,340/-

The award dated 21.9.2015 is modified to the extent that the amount awarded of ₹16,01,220/- is enhanced to ₹23,93,340/-. The appellants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

19.12.2018
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No